

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0860, State of New Hampshire v. Harlan Searles, the court on March 23, 2006, issued the following order:

Following a jury trial, the defendant, Harlan Searles, was convicted of burglary and resisting detention. Following his conviction, the defendant filed a motion for judgment of acquittal notwithstanding the verdict on the burglary charge, which the trial court granted. The State appealed. We reverse and remand.

On a motion for judgment notwithstanding the verdict, a trial court should uphold the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State. State v. Gordon, 147 N.H. 576, 579 (2002). When reviewing the trial court's judgment n.o.v., we will reinstate the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State. State v. O'Neill, 134 N.H. 182, 185 (1991).

The trial court found that the State had failed to establish that the defendant was without license or privilege to enter the dwelling. See RSA 635:1 (1996). The State concedes that the evidence presented on this element was circumstantial. When the evidence presented is circumstantial, it must exclude all rational conclusions except guilt to be sufficient to convict; the proper analysis is not whether every possible conclusion has been excluded, but rather whether every rational conclusion based upon the evidence has been excluded. See State v. Flynn, 151 N.H. 378, 382-83 (2004). We have previously held that the State may prove lack of privilege or license without requiring all the occupiers of a burglarized property to testify. See State v. Flynn, 144 N.H. 567, 569-70 (1999).

Viewed in the light most favorable to the State, the evidence included that: (1) the defendant entered the dwelling through a basement window; (2) he turned off the television and unplugged a light above the couch where the victim was sleeping; (3) he woke the victim and asked her to engage in sexual conduct with him; (4) he left as soon she refused and turned a light on; (5) he hid in a nearby ravine while the police were investigating; and (6) he tried to escape when he was discovered there.

This evidence was sufficient to support the exclusion of all rational

conclusions except that the defendant was neither licensed nor privileged to enter the dwelling of the victim. We therefore conclude that the trial court erred in granting the defendant's motion to set aside the verdict. We remand for further proceedings consistent with this order.

Reversed and remanded.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**